

**MINUTES OF THE MEETING OF THE
UNIFORM COMMERCIAL CODE COMMITTEE
OF THE BUSINESS LAW SECTION
OF THE STATE BAR OF CALIFORNIA**

Wednesday, April 11, 2007

(9:30 am. to 11:00 a.m.)

Offices of Pillsbury Winthrop Shaw Pittman LLP (“PWSP”)

The April 11, 2007 meeting of the Uniform Commercial Code Committee (the “Committee”) was called to order at approximately 9:40 a.m. with James Cochran presiding.

A. ADMINISTRATIVE MATTERS

1. **Roll Call/Attendance.** Please refer to the attendance sheet at the end of the minutes.
2. **Consideration/Approval of February 20, 2007 Meeting Minutes.** The minutes of the February 20, 2007 meeting were approved.
3. **Future Meeting Dates and Sites.**
 - a. **May Meeting** – The May Committee meeting will be held on Tuesday, May 8, 2007 at 9:30 a.m. via video conference in the offices of Pillsbury Winthrop Shaw Pittman LLP (SF and LA) subject to confirmation of availability.
 - b. **Future Meetings** - Future meetings will be held via video conference at 9:30 a.m. in the offices of Pillsbury Winthrop Shaw Pittman LLP (or in person, as indicated below) as follows, subject to confirmation of dates and availability of videoconference equipment:
 - i. Tuesday, June 12, 2007 (in person meeting in Oakland);
 - ii. Tuesday, July 10, 2007 (subject to confirmation);
 - iii. Tuesday, August 14, 2007;
 - iv. State Bar Annual Meeting location,

September, 2007 (Details TBA).
4. **Applications to Committee.** Barry Dubin reminded Committee members that the deadline for applications for membership was May 1st and urged members to identify potential candidates and to encourage them to apply for membership. The Executive Committee wanted the Committee to provide proposed new members no later than June 15, 2007, and preferably by June 1, 2007. Given the point in the membership year, the Committee will consider the pending applications of George Kalikman and Peter Burke as well as any other

applications for membership for the new year (starting September 2007). James Cochran will contact the current applicants to advise them of the status of the applications and that the Committee should be back to them in mid-June with further news.

B. MAIN AGENDA ITEMS

1. Hidden Liens Project:

Demetria Vong-Spillan reported that the lien by lien analysis of the draft report had been assigned to members of the Subcommittee for substantive review. This phase of review is focused on the substantive law and analysis: a subsequent review would focus on format and style of the sections for stylistic consistency. For the present, the subcommittee was soliciting comments on the introduction to the report.

Not all liens in the initial “hidden lien” listing will have a substantive discussion/analysis: only the liens in bold would have a substantive treatment. Committee members made several suggestions were made concerning certain language of the introduction. It was recommended that the lien listing be moved to an appendix and a table of contents be added. It was also suggested that each category of liens treated have a short introduction or explanation of the theme or features shared by the liens in the category. The comments were taken under advisement to be incorporated in the next draft of the report.

2. Debtor Names:

Committee members discussed and provided comments on Janice Kosel’s draft article titled “A Rose By Any Other Name Is Called Malpractice”. The article treats the problems of determining/verifying a debtor’s correct name and the risks of searching under a less than complete and accurate debtor name. The article surveys the recent cases germane to matters of a debtor’s correct name and financing statements deemed seriously misleading because they are not disclosed under a search of the debtor’s correct name. The article concludes with some “best practice” recommendations for determining the debtor’s name for purposes of a financing statement.

An extended discussion ensued concerning various issues raised in the article, including tax liens, identifying the debtor for a trust, and reliance on terms of individual identification on which a notary relies. It was suggested that the article is a “best practices” article, not a proposal for a safe harbor. It was noted that the article should reflect that there was substantial debate and controversy relating to the correct name for purposes of financing statements and UCC searches and that the article should not be taken to establish a standard of care.

Janice Kosel welcomed the various comments and will incorporate the suggestions in a subsequent draft.

C. SUBCOMMITTEE AND OTHER REPORTS:

1. Legislation and Case Law Tracking Subcommittee: Wansun Song reported that the search logic used to search for legislation of potential relevancy to the Committee have

yielded a search result of over 200 pages of California proposed bills. This report is likely unusually long and subsequent searches are likely to be less voluminous. A very high percentage of the proposed legislation has no relevance to the Committee. The search result has been broken into segments and assigned to Subcommittee for review: some but not all assignments have been completed.

One bill of interest, AB1484, would provide that a Secretary of State could accept filings for a security interest in a state trademark creating potential for a means of perfection in a state trademark other than by filing a financing statement under Division 9. Karl Christiansen committed to review the legislation. Brenda Ruttenberg noted that one bill proposed to amend CCP provisions concerning service of a writ of attachment to provide for service within five court rather than business days. This legislation does not appear to warrant further monitoring by the Committee.

2. Website Development.

2.1. Email “Blast”

Vasco Morais and Wansun Song are working on an email “blast” to BLS members that will inform members of the hidden liens report, the UN Convention of Assignment of Receivables as well as solicit new members for the Committee.

2.2. “Ask the Expert”

James Cochran reported that he had received some feedback from the Executive Committee on the Committee’s “Ask the Expert” proposal.

The Executive Committee had some mixed feelings concerning the proposal: they liked certain parts, but were concerned, among other things, about liability for “advice” given and that there might be a deluge of inquiries that the Committee was not prepared to handle. The Executive Committee did not approve or disapprove of the proposal, but requested that the Committee submit a detailed proposal rather than an executive summary of the program. This detailed proposal should include or address the following matters:

- i. The proposal should include the language of disclaimer to be included on the “Ask the Expert” web page.
- ii. The proposal should address how the Committee will deal with the potential for a large volume of inquiries. Tentative Response: Not all inquiries need to have a response from the “expert”: the “intake function” will select inquiries that will be the most helpful to membership.
- iii. The proposal should include more candidates to serve as the “Expert”.

- iv. The proposal should confirm that the program is technically feasible, i.e., can be managed as part of the State Bar website. Vasco Morais has been communicating with Susan Orloff on these issues and will need to close the loop on the technical requirements/constraints.

3. Deposit Control Agreements: Brenda Ruttenberg reported that there was no update from the ABA Committee. Peter Munoz has given a presentation on the ABA forms at a seminar for the California Bankers Association, and this might lead to a number of the smaller banks who are members of CBA to adopt the forms. It was reported that B of A and Wachovia Bank are committed to using the forms.

4. Uniform Assignment of Rents: Wansun Song reported that 3 of the 5 Subcommittee members had completed their assignments for the draft report, but 2 members had not completed their assignments.

5. Publications and Programs: Barry Graynor reports the Committee had more than 7 outstanding publications or program proposals including the following: the ABA website had a link to the Committee's letter to PEB concerning the Commercial Money Center decision; Vasco Morais' article concerning the Commercial Money Center case; the proposal for a "UCC Best Practices" presentation at the State Bar Annual Meeting; a March 20 Corporate Law department presentation by certain Committee members; Janice Kosel's article on debtors' name issues; and the proposed e-bulletin to BLS membership .

6. Liaison: No report.

7. E-Commerce: No report.

8. BLS Model Opinion Project: James Cochran had no update to report.

D. LIAISON UPDATES

1. Insolvency Law Committee Liaison. Ellen Friedman attended on behalf of the Insolvency Law Committee. She reported that the ILC still contemplates a written response with respect to the Committee's position on possible amendment of CCP 697.530 concerning judgment liens. The ILC is also working on a California legislation to permit a writ of attachment to be renewed after 5 years.

2. Other Liaisons. There were no other liaison reports.

E. OTHER ITEMS NOT ON AGENDA

1. UCOTA.

Ed Huddleston of the UCOTA Drafting Committee was seeking to amend/retire UCOTA and desired to correspond with the Subcommittee on UCOTA. Barry Dubin noted that the Committee had some substantial issues with certain provisions proposed by the UCOTA Drafting Committee: he recalled the issues had been summarized in a memo, but that a major issue had been the provisions concerning entrustment. Barry Dubin proposed that for the next meeting the Committee's prior memo be located and circulated and the UCOTA Subcommittee

be reconstituted. Barry Gaynor would contact Ed Huddleston and advise him that the UCOTA Committee would be reconstituting the Subcommittee.

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The meeting was adjourned at approximately 11:15 a.m.

Attendance at the April 11, 2007 Meeting:

James S. Cochran	Present
Barry A. Dubin	Present
Janice E. Kosel	Present
Wansun Song	Present
Harry C. Sigman	Absent
Ariel Berrios	Present
Kevin C. Cops	Present
Patrick Costello	Present
Karl H. Christiansen	Present
Jennifer Dinkelman	Absent
Francis X. Ferrer	Absent
Barry A. Graynor	Present
Elliott Hinds	Absent
Vasco H. Morais	Absent
John C. Oehmke	Absent
Theotis F. Oliphant	Absent
Brenda H. Ruttenberg	Present
Robert Sherman	Absent
Robert A. Trodella, Jr.	Absent
Demetria Vong-Spillan	Present
Edith R. Warkentine	Absent
Troy Zander	Absent
Pauline M. Stevens (Ex Com Liaison)	Absent
Ellen Friedman (Insolvency Law Committee liaison)	Present
Nina Hong (Corporations Committee liaison)	Absent